

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRANCE JOE QUINLAN,

Plaintiff(s),

v.

KING COUNTY et al,

Defendant(s).

CASE NO. 2:22-cv-01718-TL-SKV

ORDER ADOPTING REPORT AND
RECOMMENDATION

Plaintiff filed a civil rights action under 42 U.S.C. § 1983 against Defendants relating to his arrest in December 2002. This matter comes before the Court on the Report and Recommendation of the Honorable S. Kate Vaughan, United States Magistrate Judge (Dkt. No. 12), and Plaintiff Terrance Joe Quinlan's objections to the Report and Recommendation (Dkt. No. 13). Having reviewed the Report and Recommendation, Plaintiff's objections, and the remaining record, the Court ADOPTS the Report and Recommendation and OVERRULES the objections.

1 A district court “shall make a de novo determination of those portions of the report or
 2 specified proposed findings or recommendations to which objection is made.” 28 U.S.C.
 3 § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (the Court “must determine de novo any part of the
 4 magistrate judge’s disposition that has been properly objected to.”). “The district judge may
 5 accept, reject, or modify the recommended disposition; receive further evidence; or return the
 6 matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); *accord* 28 U.S.C.
 7 § 636(b)(1). A party properly objects when the party files “specific written objections” to the
 8 report and recommendation as required under Federal Rule of Civil Procedure 72(b)(2).

9 Mr. Quinlan objects to the Report and Recommendation because he believes he only has
 10 two previous strikes under 28 U.S.C. § 1915(g). In particular, he believes that the order in
 11 *Quinlan v. King County*, No. C22-0902-RAJ (W.D. Wash. Nov. 3, 2022) (“the King County
 12 Case”), which dismissed his case for failure to state a claim, does not count as a strike because
 13 “[t]he court did not rule a strike in [the King County Case].” Dkt. No. 13 at 1. The King County
 14 Case dismissed Mr. Quinlan’s complaint without prejudice pursuant to 28 U.S.C.
 15 § 1915(e)(2)(B) but did not explicitly identify it as a strike under 28 U.S.C. § 1915(g). *See King*
 16 *Cnty.*, No. C22-0902-RAJ, slip op. at 1. In comparison, the orders of dismissal in Mr. Quinlan’s
 17 other two cases did explicitly state that the dismissal counted as a strike. *See Quinlan v. Dep’t of*
 18 *Corr.*, No. C22-75-BJR, slip op. at 1 (W.D. Wash. June 9, 2022); *Quinlan v. Maleng*, No. C21-
 19 1146-RSL, slip op. at 1 (W.D. Wash. Dec. 22, 2021).

20 As the Supreme Court has pointed out, analysis of this issue “begins, and pretty much
 21 ends, with the text of Section 1915(g).” *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 (2020).
 22 The statute states:

23 In no event shall a prisoner bring a civil action or appeal a
 24 judgment in a civil action or proceeding under this section if the
 prisoner has, on 3 or more prior occasions, while incarcerated or

1 detained in any facility, brought an action or appeal in a court of
2 the United States that was dismissed on the grounds that it is
3 frivolous, malicious, or *fails to state a claim upon which relief may*
4 *be granted*, unless the prisoner is under imminent danger of serious
5 physical injury.

6 28 U.S.C. § 1915(g) (emphasis added).

7 In the King County Case, the Magistrate Judge “recommend[ed] that “[Mr. Quinlan’s]
8 complaint and this action be dismissed without prejudice, under 28 U.S.C. § 1915(e)(2)(B), for
9 failure to state a cognizable claim for relief.” *King Cnty.*, No. C22-0902-RAJ, Dkt. No. 15. The
10 District Judge adopted the recommendation by the Magistrate Judge and dismissed
11 Mr. Quinlan’s King County Case complaint without prejudice. *Id.*, Dkt. No. 16. Mr. Quinlan
12 correctly notes that the District Court Judge was silent on whether the dismissal counted as a
13 strike. But there is nothing in the statute that gives a court discretion whether to count a § 1915
14 dismissal as a strike. Whether a dismissal counts as a strike “hinges exclusively” on the language
15 of the statute and, in particular, the basis for dismissal. *Lomax*, 140 S. Ct. at 1724–25. Further,
16 “[a] dismissal of a suit for failure to state a claim counts as a strike, whether or not with
17 prejudice.” *Id.* at 1727. Therefore, because the King County Case was dismissed for failure to
18 state a claim, this Court has no choice under *Lomax* but to interpret the dismissal in the King
19 County Case as a strike. 140 S. Ct. 1727. Accordingly, Magistrate Judge Vaughan was correct in
20 counting the King County Case as a third strike, which triggers the three-strikes rule of 28 U.S.C.
21 § 1915(g).

22 For the foregoing reasons, the Court hereby ORDERS:

23 (1) The Report and Recommendation is APPROVED and ADOPTED.

24 (2) The Clerk is DIRECTED to close this case and to dismiss it without prejudice if
Plaintiff fails to pay the filing fee within 30 days of this Order.

1 (3) The Clerk is DIRECTED to send copies of this Order to the Parties and Judge
2 Vaughan.

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4 Dated this 19th day of January 2023.

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7 Tana Lin
8 United States District Judge
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